

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2021 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KIRANBHAI PRAVINBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners No. 1-2
MS DS PANDIT, AGP for Respondents No. 1-2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. The petitioners and their father had made an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 for a declaration that they

were tenants in respect of the land bearing Survey No.223/1 situated in village Sarodhi, Taluka Valsad, District Bulsar belonging to respondent no.3. The Mamlatdar and A.L.T., Valsad, after holding an inquiry, by his order dated 30th October, 1983, allowed the said application and granted the declaration in favour of the petitioners and their father to the effect that they were tenants in respect of the said land. However, the Deputy Collector, Valsad in exercise of his suo motu power under Section 76-A of the Act called for the record and proceedings of the case and by his judgment and order dated 20th July, 1984, set aside the order passed by the Mamlatdar on the ground that the petitioners and their father were not agriculturists within the meaning of the said term as defined under the Tenancy Act. The petitioners filed revision application before the Gujarat Revenue Tribunal but the same was dismissed on 30th November, 1987. They filed a review application before the Tribunal but it was dismissed on 21st February, 1992.

2. The petitioners, therefore, filed this petition under Article 227 of the Constitution challenging the orders of the Deputy Collector and the Revenue Tribunal. The petition was admitted on 20th March, 1992 and the operation of the impugned order was stayed.

3. The Deputy Collector set aside the order of the Mamlatdar on the ground that the petitioners were not agriculturists as defined under Section 2 sub-clause (6) of the Act and hence, there was a violation of Section 63 of the Act which provides that no lease of any land shall be valid in favour of a person who is not an agriculturist.

4. Now, the petitioners' case is that they alongwith their father were admittedly cultivating the land bearing Survey No.377 situated in the sim of village Kikwad, Taluka Bardoli, District Bulsar. Before the Revenue Tribunal, it was contended on behalf of the State Government that the petitioners had agricultural lands and were agriculturists in Surat and Bardoli but as the land in question is situated far away from those lands, the petitioners could not be treated as agriculturists. Section 2 sub-section (2) of the Act provides that an agriculturist means a person who cultivates the land personally. Sub-section (6) as it stood at the relevant time read as follows:-

"(6) 'to cultivate personally' means to
cultivate land on one's own account -

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in case or kind but not in crop share, being land, the entire area of which -

(a) xxx xxx xxx

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) xxx xxx xxxx"

It is not in dispute that the petitioners had other agricultural lands and were agriculturists in Surat and Bardoli but since the said lands were situated more than 5 miles away from the land in question, they could not be said to cultivate the land personally in view of the provisions contained in Section 2 sub-section 6 sub-section (b).

5. In 1995, the Legislature amended the Act and in Section 2 sub-section (6), the portion beginning with the words "being then the entire area" and ending with the words "one compact block" were deleted. Hence, it was no longer necessary for the two lands to be situated within the distance of 5 miles of each other. However, there was a doubt as to whether the deletion of the said provision was retrospective or not. Now, the Legislature has removed the said doubt by enacting Gujarat Act No.3 of 2001 which is deemed to have come into force on 6th November, 2000. Section 2 of the said Act amends the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1995 (Guj. 4 of 1995) (which is referred to as 'the Amending Act') and substitutes in the Amending Act for the words 'shall be deleted', the words 'shall be and shall be deemed always to have been deleted'. The effect of this provision is that the provision in Section 2 sub-section (6) sub-clause (b) which was a hurdle in the way of the petitioners is removed with retrospective effect. Section 3 of the Amending Act of 2001 provides that all proceedings relating to any order made or purported to be made under Section 84-C of the Tenancy Act for contravention of provisions of Section 63, so far as it relates to the breach of Clause (6) of Section 2 of

the principal Act pending before any Court, Tribunal or other authority shall stand abated notwithstanding anything contained in Section 84-C of the principal Act. Section 4 of the Amending Act of 2001 provides that the amendment made by Section 2 shall not affect the validity of any such order referred to in Section 3, made by any Court, Tribunal or other authority before the date of commencement of the Amending Act (i.e. the Amending Act of 1995) which has become final. However, the explanation to Section 4 provides that the word 'final' means that no appeal, revision or any proceeding is pending before any Court, Tribunal or other authority against any such order on the date of commencement of the Amending Act. Now, in the present case, the proceedings arose on an application made by the petitioners under Section 70(b) of the Tenancy Act and they did not arise out of any order made or purported to be made under Section 84-C of the Act. Hence, the provision for abatement of legal proceedings contained in Section 3 of the Amending Act of 2001 may not apply but at the same time the deletion of the provision under Section 2 sub-section (6) of the principal Act has been made with retrospective effect. In the present proceedings, the petitioners were held to be non-agriculturists in respect of the land in question because, though they were holding other agricultural lands, they were beyond the distance of 5 miles from the land in question and hence, in view of the provisions contained in Section 2 sub-section (6) sub-clause (b), they could not be said to be agriculturists. However, the said provision has been deleted with retrospective effect and Section 2 sub-section (6) has to be read as if the said provision was never there. In the circumstances, the finding of the Deputy Collector which was confirmed by the Revenue Tribunal to the effect that the petitioners could not be said to be agriculturists cannot be sustained. Hence, this revision application is allowed. The impugned orders are set aside and the order passed by the Mamlatdar is restored. Rule made absolute with no order as to costs.

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